

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LYNN CALER,

Petitioner,

Case No. 1:06-cv-172

v.

Hon. Janet T. Neff

CAROL HOWES,

Respondent.

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ORDER

Petitioner has filed a Petition for Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2254. This matter is now before the court on “Petitioner’s motion to invoke Federal Habeas Rule #23” (docket no. 39).

Petitioner commenced the present action while incarcerated at the Lakeland Correctional Facility. Petitioner states that he was transferred to the Parr Highway Correctional Facility in violation of “Habeas Rule #23,” and requests to be returned to the Lakeland Correctional Facility. Petitioner is apparently referring to Federal Rule of Appellate Procedure 23(a), which provides as follows:

Transfer of Custody Pending Review. Pending review of a decision in a habeas corpus proceeding commenced before a court, justice, or judge of the United States for the release of a prisoner, the person having custody of the prisoner must not transfer custody to another unless a transfer is directed in accordance with this rule. When, upon application, a custodian shows the need for a transfer, the court, justice, or judge rendering the decision under review may authorize the transfer and substitute the successor custodian as a party.

By its own terms, Rule 23(a) applies to the transfer and custody of prisoners “pending review of a

decision in a habeas corpus proceeding.” No decision has been made on petitioner’s habeas claim in this court and no appeal is pending. Rule 23(a) simply does not apply to petitioner’s situation. Petitioner’s motion is **DENIED**.

IT IS SO ORDERED.

Dated: January 22, 2008

/s/ Hugh W. Brenneman, Jr.
HUGH W. BRENNEMAN, JR.
United States Magistrate Judge